

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
THEODORE D. TAYLOR,

Appellant,

**V.**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 82-2

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER, the appeal of a denial of surface water withdrawal application S4-26136, having come on regularly for formal hearing on April 22, 1982, in Lacey, and appellant representing himself and respondent appearing by its counsel, Assistant Attorney General Robert E. Mack, with Gayle Rothrock presiding and Board member Nat Washington present, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the 6th day of August, 1982, and more than twenty days having elapsed from said service; and

The Board having received no exceptions to said Proposed Order and

1 the Board being fully advised in the premises; NOW THEREFORE,

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed Order  
3 containing Findings of Fact, Conclusions of Law and Order dated the 6th  
4 day of August, 1982, and incorporated by reference herein and attached  
5 hereto as Exhibit A, are adopted and hereby entered as the Board's  
6 Final Findings of Fact, Conclusions of Law and Order herein.

7 DONE this 8<sup>th</sup> day of September, 1982.

8 POLLUTION CONTROL HEARINGS BOARD

9  
10 Gayle Rothrock  
11 GAYLE ROTHROCK, Chairman

12 David Akana  
13 DAVID AKANA, Lawyer Member

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POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
THEODORE D. TAYLOR,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

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PCHB No. 82-2

PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a denial by the Washington State Department of Ecology of surface water withdrawal application S4-26136, came on for hearing before the Pollution Control Hearings Board; Nat Washington and Gayle Rothrock (presiding) seated for and as the Board; on April 22, 1982, in Lacey, Washington. Respondent agency elected a formal hearing. The proceedings were electronically recorded.

The State Department of Ecology was represented by its counsel, Assistant Attorney General Robert E. Mack. Appellant represented himself.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were examined and  
2 admitted. Oral argument was heard. From the testimony, evidence, and  
3 argument reviewed the Board makes these

4 FINDINGS OF FACT

5 I

6 Appellant Taylor and his spouse are property owners and residents  
7 in Ollala Creek Canyon, near Cashmere. They own lot 12B of a  
8 subdivided stretch of creek-front land (Ollala Orchard Tracts) at the  
9 lower end of the canyon. They have direct access to adequate domestic  
10 water supply and .7 acre irrigation water supply. The Taylors are  
11 members of the Ollala Orchards Water Association.

12 II

13 Ollala Creek drains a 9-square mile portion of the Wenatchee River  
14 Basin. The area is a narrow V-shaped, fairly steep canyon. The creek  
15 flows most of the year along some reaches, is dry most of the year  
16 along other reaches, and in late summer sometimes the entire creek can  
17 be dry. The exchange relationship of surface and ground water there  
18 is not fully understood. Exact precipitation and ground water  
19 recharge rates have not been calculated, but hydrologic studies of the  
20 creek have made approximations.

21 Seismic soundings of the sediments depth-to-bedrock have been  
22 taken which indicate variable sediment depth and varying permeability  
23 performance of underground bedrock (sandstone and gneiss) along the  
24 creek. Thus, the creek itself has gaining reaches and losing reaches.

1 The watershed has a limited storage capacity and the relatively  
2 small supply of available water fluctuates from season to season and  
3 year to year. The average annual supply of available water is  
4 estimated to be 360 to 720 acre-feet.

### 5 III

6 Several water withdrawal permits and certificates have been issued  
7 in the area, some to individual residents and irrigators and some to  
8 the Ollala Orchards Water Association (OOWA). The lower 4 lots  
9 receive irrigation water from the Wenatchee Reclamation District. Not  
10 all water users in the lower canyon belong to the OOWA. Use of water  
11 in this intriguing watershed is not a cooperative venture.

### 12 IV

13 In February of 1979 appellant Taylor applied for .06 cubic feet  
14 per second of Ollala Creek water for irrigation of orchard and pasture  
15 land on his lot. He subsequently assigned his interest in the  
16 application to OOWA. The requested point of withdrawal is  
17 approximately 800 feet south and 1600 feet from the Northeast corner  
18 of Section 25, Township 24 North, Range 18 E. Willamette Meridian and  
19 located on the southerly end of Lot 12B, a losing reach of Ollala  
20 Creek. The requested point of diversion (withdrawal) is approximately  
21 700 feet upstream from the existing point of diversion under  
22 certificates S3-00974C and S4-23956C, on lot 12D.

23 On appeal Mr. Taylor asked to change his point of diversion to the  
24 downstream spot where diversion under authority of S3-00974C occurs.

V

One year ago the Pollution Control Hearings Board signed a Stipulation and Agreed Order relating to lot 12D and the preferable withdrawal of a quantity of water (subject to existing rights) down gradient from a source originally requested. The avoidance of adverse effects on stream and spring diversions was contemplated by the Stipulation and Order.

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these matters and these persons.  
RCW 43.21B.

II

RCW 90.03.290 requires the State Department of Ecology to make four determinations before issuing a water use permit: (1) what water, if any, is available; (2) to what beneficial uses the water is to be applied; (3) will the appropriation impair existing rights; and (4) will the appropriation detrimentally affect the public welfare.  
Stempel v. Dept. of Water Resources, 82 Wn.2d 109, 115 (1973).

In addition state management of water resources must achieve protection and utilization for the greatest public benefit, must urge

1 coordination of water supply systems, and must respect the natural  
2 interrelationships of surface and ground water. RCW 90.54.010 and 020.

### 3 III

4 Water is physically available for a beneficial use (irrigation)  
5 from the creek at lot 12B only during part of the irrigation season.  
6 A new diversion at 12B on the creek could have a considerable impact  
7 on the operation of the irrigation water systems under Certificate  
8 S3-00974C and on other permitted uses. The proposed diversion at 12B  
9 would have a minor influence on the flow of the unnamed spring which  
10 provides the canyon community's domestic water supply.

### 11 IV

12 Use of the OOWA as an applicant for co-ordinated withdrawals for  
13 beneficial uses meets the management test of RCW 90.54; however,  
14 additional withdrawals during low-flow seasons from new or existing  
15 points of diversion stresses both the complicated natural water  
16 drainage system and the labyrinth of existing rights. This  
17 application therefore, fails to meet the tests of RCW 90.03 and 90.54.

### 18 V

19 A proper well-conceived application for (a) a water withdrawal,  
20 (b) a change of use or, (c) change of point of diversion or some  
21 combination of these must be made to the Department of Ecology in  
22 accordance with the State Water Code at chapter 90, RCW. Appellants'  
23 frequent application changes, even through the appeal hearing before  
24 this Board, leave too much confusion and disarray for such an appeal  
25 to be granted, regardless of the hopes and intentions of the appellant.

26 PROPOSED FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 82-2

VI

The Board has previously decided in PCHB No. 81-74 that a new withdrawal on upgradient waters in the Ollala Creek canyon on lot 12 is not in the public interest.

VII

Any Finding of Fact which could be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters the following

ORDER

The denial of S4-26136 by the Department of Ecology is affirmed.

DATED this 6<sup>th</sup> day of August, 1982.

POLLUTION CONTROL HEARINGS BOARD

  
GAYLE ROTHROCK, Acting Chair